IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 278 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SWAMI SADANAND GURUDATTJI - Opponent(s)

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Appearance :
MS DS PANDIT APP for Appellant(s) : 1,
MRS MADHUBEN SHARMA for Respondent (s) : 1,
MR DN KIRATSATA for : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 06/08/2007

ORAL JUDGMENT

1. Heard Ms. D.S. Pandit, learned A.P.P. for the appellant – State.

2. The appellant - State has prayed for enhancement in sentence imposed by the learned trial Judge in Criminal Case No.2450 of 1997. The respondent – accused was prosecuted by the Drug Inspector (1) serving under Additional Commissioner, Food and Drugs Control Authority, Vadodara for the offence under Section 33 EE (c) (b) also under Section 33 EE (c) (a) of the Drugs & Cosmetics Act, 1940, punishable under Section 33 I (1) (a) of the said Act.

3. On service of process issued by the learned trial Judge, the respondent – accused had appeared and admitted the offence while recording the plea by the learned Chief Judicial Magistrate, Vadodara. Thereafter, he had passed a written pursis vide Exhibit 10 admitted his guilt.

4. Basically the allegation against the respondent - accused was that he was adulterating steroid in the Ayurvedic medicine manufactured & stored, therefore and it was being sold by the respondent – accused. The samples were sent for analysis and ultimately, it was found that there was no steroid in the Ayurvedic medicine, which were found during the raid carried out by the competent officer. The laboratory report reveals

that the samples found were of Ayurvedic medicines. It reveals that no offence can be said to have been committed. It can be said to be an irregularity of not obtaining licence/permission from the competent authority. He was not able to produce any evidence to show that he is an authorised Ayurvedic practitioner.

5. It would be beneficial to quote the relevant Section 33 I (1) (a) , which provides that the accused who is found guilty for the offence punishable under Section 33 EE (c) should be imposed a fine of Rs.2,000/-. There is no proviso like sub-section (b) of the said Section 33 I , which provides for penalty for manufacture, sale etc. of Ayurvedic Siddha or Unani drugs. Sub-section (b) provides for minimum fine of Rs.5000/-. The said proviso authorises the Court to impose fine of less than minimum punishment by assigning adequate and special reasons in the judgment. So far as Sub-section (a) is concerned, no such proviso is there. So the learned trial Judge could not have imposed fine of the amount less than Rs.2000/-.

6. Nobody is present for the respondent – accused. Record and Proceedings are before the Court. Even for the sake of argument, if this Court is of the view that the charge of the offence punishable under Section 33 EE (c) and (b) has not been established, even then the

respondent - accused could have been held guilty on admission, so far as under Section 33 EE (c) (c) of the said Act is concerned. So, there was no discretion available with the learned trial Judge to impose penalty lesser than minimum prescribed.

7. Learned A.P.P. Ms. D.S. Pandit, therefore, submits that considering the totality of the facts emerging from the record, vis-a-vis original earlier grave allegation, if the amount of fine is increased to the tune of Rs.2000/- i.e. minimum prescribed under the Act, the appeal of the appellant - State would be satisfied.

8. Having considered the contentions of the appellant - State and the fact of admission of guilt of the respondent - accused, the learned trial Judge ought to have imposed minimum fine provided under the law. There was no scope for the learned trial Judge to impose fine less than minimum prescribed as no discretion has been conferred upon the learned Magistrate conducting the said two offences. This is not a case where the respondent - accused could have been sent to jail, but the amount of fine of Rs.50/- has been paid. The payment of fine be taken care of at the time of recovery of the additional amount of fine imposed by the learned trial Court.

9. In view of the above, present appeal No. 278 of 2001 preferred by the State is allowed. The amount of fine imposed by the learned Chief Judicial Magistrate Judge, Vadodara, in Criminal Case No.2450 of 1997, is hereby enhanced to Rs.2000/- i.e. minimum prescribed in the Act. The accused be directed to pay the remaining amount of Rs.1,950/- (Rupees One thousand nine hundred fifty only) with the trial Court within 30 days from the receipt of writ of the order of this Court. In default of paying the amount of fine, the accused is directed to undergo Simple Imprisonment for 8 (eight) days. If the accused fails to pay the amount of Rs.1,950/- from the receipt of the writ of this Court, the learned trial Judge shall issue warrant against the respondent – accused, so that he can be sent to prison to serve sentence in default of fine. The appeal is allowed to the aforesaid extent.

(C.K. BUCH, J.)

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